

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

WAYNE NEVILLE MORRIS,	)	CASE NO. C04-2403Z
	)	
Plaintiff,	)	
	)	
v.	)	REPORT AND RECOMMENDATION
	)	
UNITED STATES DISTRICT COURT,	)	
WESTERN DISTRICT OF WASHINGTON,	)	
	)	
Defendant.	)	
_____	)	

INTRODUCTION AND SUMMARY CONCLUSION

Plaintiff, proceeding *pro se*, filed a pleading in this Court titled “Motion Invoking ‘Federal Question Jurisdiction,’ Pursuant to 28 U.S.C.A. § 1331, To Resolve a ‘Well-Pleaded Complaint’ of ‘Injury,’ Pursuant to FRCP., Rule 7(a), Based Upon Two Constructions of 18 U.S.C.A. § 3231, The ‘Abrogation’ of Article III, § 2, and the Resultant Violations of the ‘Separation-of-Powers’ Doctrine, With Additional Authority to ‘Declare’ the Plaintiff’s ‘Rights’ and to ‘Create a Remedy’ Under 28 U.S.C.A. § 2201(a), Filed in Accordance with FRCP., Rule 57, and ‘Injunctive Relief,’ Pursuant to 28 U.S.C.A., § 2202, Filed in Accordance with FRCP., Rule 65.” (Dkt. 1.) (emphasis in original). The Court construed the pleading as a complaint.

Plaintiff’s complaint concerns alleged errors in CR99-174C (a criminal case in which

01 plaintiff was convicted of armed robbery, assault on a federal officer, and related offenses) and in  
02 C04-266C (a habeas proceeding under 28 U.S.C. § 2255 that plaintiff brought in this Court to  
03 challenge his 1999 conviction). In particular, plaintiff argues that this Court lacked subject matter  
04 jurisdiction to enter a judgment against him in CR99-174C.<sup>1</sup> Plaintiff requests declaratory and  
05 injunctive relief. Among other things, plaintiff requests a declaration that the Court's judgment  
06 in CR99-174C was a "void judgment." (Dkt. 1 at 48.)

07 Judge Zilly denied plaintiff's request for injunctive relief on the grounds that any defects  
08 in the proceedings in CR99-174C and C04-266C had to be raised in the Court of Appeals. (Dkt.  
09 7.) He also referred all further proceedings in this matter to the undersigned Magistrate Judge.

10 Upon consideration of plaintiff's complaint, the undersigned issued an order to show cause  
11 why this case should not be dismissed. (Dkt. 8.) Plaintiff filed three documents in response: (1)  
12 "'Motion to Counterclaim,' Pursuant to FRCivP., Rule 7(a), to Rebut the Defendant's Affirmative  
13 defense, Styled as a 'Show Cause' Order, Presumably Under FRCivP., Rule 8(c)," (Dkt. 9); (2)  
14 "'Motion to 'Withhold Consent' of this Action being Referred to a United States Magistrate Judge,  
15 Pursuant to Title 28 U.S.C.A. § 636(c)(2)," (Dkt. 10); and (3) "Motion to Take 'Judicial Notice,'  
16 Pursuant to Federal Rules of Evidence, Rule 201(d)," (Dkt. 11.) While only the first document  
17 responds to the issues raised in the Court's show cause order, the undersigned addresses each of  
18 these documents in this report and recommendation in the interest of expediently resolving this  
19 matter.

20 Plaintiff's "Motion to 'Withhold Consent'" and "Motion to Take 'Judicial Notice'" pertain  
21 to his contention that Judge Zilly erred in referring this matter to the undersigned pursuant to 28  
22 U.S.C. § 636(b)(1), allowing for the designation of a magistrate judge to hear and determine  
23 appropriate pretrial matters. Plaintiff contends Judge Zilly should have referred this matter  
24 pursuant to 28 U.S.C. § 636(c)(1), allowing for the assignment of a magistrate judge upon the

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26 <sup>1</sup> Plaintiff also argued in his § 2255 motion that the Court lacked subject matter  
jurisdiction in CR99-174C. *See, e.g.*, Dkt. 30 in case number C04-266C.

01 consent of the parties, and seeks to withhold his consent to such an assignment. Plaintiff further  
02 asserts that the magistrate judge referral results in a conflict of interest given that his current  
03 complaint challenges the interpretation of the law contained within the report and recommendation  
04 issued by the undersigned in his habeas proceeding. However, plaintiff fails to demonstrate any  
05 error in the referral of this matter pursuant to 28 U.S.C. § 636(b)(1), nor provide any support for  
06 his conclusory assertion that the undersigned's involvement in this matter would be improper.  
07 Accordingly, plaintiff's motion to take judicial notice, and his associated motion to withhold  
08 consent, lack merit.

09 Plaintiff also fails to rebut the deficiencies outlined in the Court's order to show cause in  
10 his "Motion to Counterclaim."<sup>2</sup> Plaintiff's complaint – asserting that the Court lacked subject  
11 matter jurisdiction to enter a judgment against him – constitutes a collateral attack on the  
12 proceedings in CR99-174C and C04-266C and, by extension, an attack on the validity of his  
13 conviction. Courts "should not exercise jurisdiction over a declaratory judgment action raising  
14 questions regarding the validity of a conviction." *Clausell v. Turner*, 295 F. Supp. 533, 536  
15 (S.D.N.Y. 1969). As Judge Zilly noted in denying the request for injunctive relief, plaintiff's  
16 recourse for alleged errors in his criminal and habeas proceedings would be in the Court of  
17 Appeals.<sup>3</sup> See, e.g., *Glitsch, Inc. v. Koch Eng'g Co.*, 216 F.3d 1382, 1384 (Fed. Cir. 2000)  
18 ("When a court enters an order that a party does not like, the party's recourse is to seek relief on  
19 appeal; it is not appropriate for the party to contest the court's order by filing a new action seeking  
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21 <sup>2</sup> Plaintiff styled this response as a "Motion to Counterclaim" based on his belief that the  
22 show cause order issued by the Court served as an affirmative defense for defendants.

23 <sup>3</sup> Plaintiff appears to suggest that he has been inhibited from pursuing such an appeal by  
24 this Court. The Court did deny plaintiff a certificate of appealability, finding his argument that the  
25 Court lacked jurisdiction to adjudicate his criminal trial "not debatable" based on Ninth Circuit  
26 precedent, and stating that it would be "frivolous" to encourage plaintiff to proceed further with  
that claim. (See Dkt. 54 in case number C04-266C). However, the Court recently sent the appeal  
notification packet relating to plaintiff's habeas proceeding to the Court of Appeals. (*Id.* at Dkt.  
56.)

01 a declaratory judgment challenging the court's ruling in the first case.")

02 "The exercise of jurisdiction under the Federal Declaratory Judgment Act, 28 U.S.C. §  
03 2201(a), is committed to the sound discretion of the federal district courts." *Huth v. Hartford Ins.*  
04 *Co. of the Midwest*, 298 F.3d 800, 802 (9th Cir. 2002). "Even if the district court has subject  
05 matter jurisdiction, it is not required to exercise its authority to hear the case." *Id.* Here, there  
06 is little basis for the exercise of the Court's discretion to hear this case even assuming subject  
07 matter jurisdiction exists, given that plaintiff essentially makes a collateral attack on previous  
08 judgments by this Court and raises arguments properly pursued in the Court of Appeals.

09 For the reasons described above, the Court recommends that plaintiff's pending motions  
10 be denied and this matter dismissed with prejudice. A proposed order accompanies this report and  
11 recommendation.

12 DATED this 5th day of July, 2005.

13  
14 /s/ MARY ALICE THEILER  
15 United States Magistrate Judge  
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